

SENATE BILL 1756
By Harris

HOUSE BILL 1755

By Clemmons

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 10; Title 12; Title 65;
Title 67 and Title 68, relative to internet neutrality.

WHEREAS, the General Assembly finds that the Federal Communications Commission has repealed net neutrality rules intended to protect consumers and to ensure fair and reasonable access to the internet; and

WHEREAS, the General Assembly finds that it is in the best interest of the state to ensure that corporations do not impede competition or engage in deceptive consumer practices, and that they offer service to broadband internet customers on a nondiscriminatory basis; and

WHEREAS, the General Assembly finds that it is in the best interest of the state to ensure the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services; and

WHEREAS, the General Assembly finds that it is in the best interest of the state to ensure the promotion of lower prices, broader consumer choice, and avoidance of anticompetitive conduct; and

WHEREAS, the General Assembly finds the removal of the barriers to open and competitive markets and the promotion of fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice is in the best interest of the state; and

WHEREAS, this state has the power to establish and enforce laws protecting the health, safety, and general welfare of its citizens; and

WHEREAS, in order to protect the health, safety, and general welfare, it is necessary for this state to ensure that all public utilities, public safety services, transportation services, and other vital public services that are operated online via the internet remain open to the citizens of this state and free from interference or throttling; and

WHEREAS, it is the intent of the General Assembly that the state shall take all steps authorized under this act to protect the open market as well as assure that necessary services in which the public relies and upon which are operated via the internet remain available to all citizens of this state; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, is amended by adding the following new chapter:

65-38-101.

This chapter shall be known and may be cited as the "Tennessee Neutrality and Internet Consumer Protection Act."

65-38-102.

For purposes of this chapter:

(1) "Affiliated entity" means any entity that controls, is controlled by, or is under common control with another entity;

(2) "Broadband internet access service" means a mass-market retail service by wire or radio in this state that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. "Broadband internet access service" also encompasses any service in this state that provides a functional equivalent of that service or that is used to evade the protections set forth in this chapter, as determined by the commission;

(3) "Commission" means the Tennessee public utility commission;

(4) "Edge provider" means any individual or entity in this state that provides any content, application, or service over the internet, and any individual or entity in this state that provides a device used for accessing any content, application, or service over the internet;

(5) "Internet service provider" means a business that provides broadband internet access service to an individual, corporation, government, or other customer in this state;

(6) "Paid prioritization" means the management of a broadband provider's network to favor, either directly or indirectly, certain traffic over other traffic. Paid prioritization includes the use of techniques such as traffic shaping, prioritization, resource reservation, or other forms of preferential traffic management, either:

(A) In exchange for consideration, monetary or otherwise, from a third party; or

(B) To benefit an affiliated entity; and

(7) "Reasonable network management" means a practice that is disclosed to the end-user and has a primarily technical network management justification but does not include other business practices. A network management practice is reasonable if it is primarily used for and narrowly tailored to achieving a legitimate and demonstrable network management purpose, taking into account the particular network architecture and technology of the broadband internet access service.

65-38-103.

An internet service provider shall not engage in any of the following activities:

(1) Blocking lawful content, applications, services, or nonharmful devices, subject to reasonable network management practices;

(2) Impairing or degrading lawful internet traffic on the basis of internet content, application, or service, or use of a nonharmful device, subject to reasonable network management practices;

(3) Engaging in paid prioritization, or providing preferential treatment of some internet traffic to any internet customer;

(4) Unreasonably interfering with, or unreasonably disadvantaging, either a customer's ability to select, access, and use broadband internet access service or lawful internet content, applications, services, or devices of the customer's choice, or an edge provider's ability to make lawful content, applications, services, or devices available to a customer; or

(5) Engaging in deceptive or misleading marketing practices that misrepresent the treatment of internet traffic or content to a customer.

65-38-104.

A person engaged in the provision of broadband internet access service in this state shall publicly disclose accurate information regarding the network management practices, performance, and commercial terms of its broadband internet access services sufficient for:

(1) A consumer to make informed choices regarding use of such services; and

(2) Content, application, service, and device providers to develop, market, and maintain internet offerings.

65-38-105.

The commission may waive the prohibition set forth in § 65-38-103(3) if a provider demonstrates to the commission's satisfaction that paid prioritization would provide some significant public interest benefit and would not harm the open nature of the internet. Any proceedings to obtain a waiver under this section shall be pursuant to chapter 2, part 1 of this title.

65-38-106.

(a) After the effective date of this act:

(1) No state governmental entity or local government shall contract with an internet service provider unless the provider is compliant with this chapter; and

(2) No internet service provider may enter into a contract to supply goods or services to a state governmental entity or local government without first attesting in writing that the provider will comply with this chapter.

(b)

(1) If an internet service provider contracts to supply internet service to a state governmental entity or submits a response to contract to supply internet service to a state governmental entity, is discovered to have knowingly violated this chapter in the performance of the contract, the chief procurement officer shall declare that person to be prohibited from contracting for or submitting a response for any contract to supply goods or services to a state governmental entity for a period of one (1) year from the date of discovery of the violation of this chapter.

(2) A provider who is prevented from contracting for or submitting a response for a contract to supply goods or services to a state governmental entity for one (1) year pursuant to subdivision (b)(1) may appeal the imposition of

the one-year prohibition by utilizing an appeals process to be established by the chief procurement officer and approved by the procurement commission.

(c) The chief procurement officer is authorized to promulgate rules to effectuate the purposes of this section. All rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

65-38-107.

The commission shall promulgate rules that establish a process whereby an internet service provider certifies to the commission that it is providing broadband internet access service in accordance with this chapter. The commission is authorized to promulgate rules necessary to implement and effectuate all other provisions of this chapter except § 65-38-106.

65-38-108.

(a) Any party injured by a violation of this chapter or the consumer advocate division of the attorney general's office exercising authority pursuant to § 65-4-118 may bring a contested case pursuant to chapter 2 of this title. The commission is authorized to issue a cease and desist order, issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each day a violation occurs, and seek additional relief in any court of competent jurisdiction.

(b) A violation of this chapter is:

(1) A violation of the Tennessee Consumer Protection Act of 1977, compiled in title 47, chapter 18, part 1; and

(2) An unjust practice in violation of § 65-4-115.

(c) This chapter does not limit any person's right to pursue any additional civil remedy otherwise allowed by law.

65-38-109.

(a) There is created a fund to be known as the internet consumer access fund.

Any penalty collected pursuant to § 65-38-108(a) shall be deposited in the fund.

Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The commission shall administer the fund.

(b) All costs of the commission associated with the administration of this chapter shall be paid from the fund. Moneys remaining in the fund after such payment may be expended, subject to appropriation by the general assembly.

(c) Any amount in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subsection (b). Interest accruing on investments and deposits of the fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

65-38-110.

If any provision of this chapter or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to actions taken on or after that date.